IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE A.K.RAJAN

CRIMINAL APPEAL No.933 of 1999

Bhaskaran .. Appellant

-Vs-

State, represented by
Inspector of Police,
Erumadu Police Station,
Nilagiri District. .. Respondent

Criminal appeal is filed under Section 374(2) Cr. P.C against the Judgment dated 30.8.1999 passed by the Sessions Judge, Uthagamandalam, Nilagiri District in S.C.No.26 of 1998, convicting the accused under Section 302 IPC and sentencing him to undergo life imprisonment.

!For appellant : Mr.N.Duraisami

^For respondent : Mr.E.Raja
Additional Public Prosecutor.

:JUDGMENT

(Judgment of the Court was delivered by
M.KARPAGAVINAYAGAM, J.)

Bhaskaran, the accused, was convicted for the offence under Section 302 IPC. Challenging the same, this appeal is filed.

2. The facts, in brief, leading to conviction are as follows:-

a) The accused Bhaskaran and the deceased Janaki are husband and wife. They have got three children. The first son is studying in college, the second son and the daughter are studying in school. The accused suspected that the deceased Janaki had illicit intimacy with PW.9 Joyi. Due to this, frequent quarrel ensued between them.

b) On 20.6.1997 at about 9.15 am., the deceased Janaki was preparing breakfast in the kitchen. The first son had gone to college and the second son and daughter had gone to school. At that time, the accused came and questioned the deceased as to where she went and came back. She told that she

went and tied the bull and then came back. The accused scolded her stating that she was telling lie. Then, there was a wordy quarrel ensued between them. He accused her that she was having some illegal connection with somebody else. She challenged him that she would go with anybodyelse and she could not be questioned. On getting enraged at this, the accused took out a knife and threatened her showing the same. Then, the deceased swiftly went inside the kitchen and took a bottle and beat the accused over his head and chest. The accused then attacked the deceased and caused injuries on the neck, shoulder etc with the knife. She fell down unconscious in the kitchen and then, after a few minutes, she died.

c) Then, the accused, with MO.1 knife, came out and proceeded to police station. On his way, he saw PW.2 Achuthan, who was ploughing the field. The accused requested PW.2 to accompany him to Police Station. Since he did not inclined to accompany him, the accused went to PW.1 Village Administrative Officer, surrendered and gave extra judicial confession. PW.1 recorded the statement given by the accused at 10 am. Ex.P1 is the statement. PW.1 prepared Ex.P2 report and then took the accused to Police Station. He handed over Exs.P1 and P2 to PW.10 Head Constable. MO.1 knife was also produced to him.

d) PW.10 registered a case for the offence under Section 302 IPC. He prepared Ex.P7 FIR and sent intimation to superior officers. PW.17 Inspector of Police took up investigation and went to the scene of occurrence and prepared Ex.P.20 rough sketch and Ex.P4 observation mahazar. He conducted inquest on the dead body between 12.50 and 4 pm and prepared Ex.P.21 inquest report. During the course of inquest, he examined PWs.1, 2, 3, 4, 5, 9 and others. He recovered MO.2 blood stained broken bottle pieces, which were found in the hands of the deceased. Further, he recovered MO.3 bloodstained sample earth. He sent the dead body for post-mortem.

e) PW.13 Dr.Natarajan conducted post-mortem on 20.6.1997 and issued Ex.P11 post-mortem certificate and gave an opinion that the deceased would appear to have died of shock and haemorrhage due to cut injuries and stab injury on the skull. PW. 17 Inspector of Police, in the meantime, arrested the accused on 20.6.1997 at 4.40 pm. Since the accused had injuries on the body, he was sent to Government Hospital for treatment on 20.6.1997 at about 8.30 pm. PW.16 Dr. Chandrababu examined him and found injuries. Ex.P19 is the accident register. PW.17 examined other witnesses and made arrangements for sending the material objects for chemical examination. Thereafter, he continued the investigation. After completing the investigation, he filed the charge-sheet under Section 302 IPC.

g) During the course of trial, on the side of prosecution, Pws.1 to 18 were examined, Exs.P1 to P21 were filed and M.Os.1 to 7 were marked.

h) When the accused was questioned under Section 313 Cr.P.C with regard to incriminating materials, he simply denied his complicity in the crime. i) The trial Court ultimately found the accused guilty under Section 302 IPC and sentenced him thereunder.

3. While assailing the judgment and conviction, Mr.N.Duraisami, learned counsel for the appellant, would take us through the entire evidence and vehemently contend that the only piece of evidence, which is available in this case, is extra judicial confession, which cannot be acted upon, as the same has not been prepared by the Village Administrative Officer in accordance with the procedures contemplated in law and as such, the accused is liable to

be acquitted. In the alternative, Mr.N.Duraisami would contend that even assuming that the entire case of the prosecution is true, the offence committed by the accused would not fall under Section 302 IPC and at the most, it would fall only under Exception 1 of Section 300 IPC, as the accused committed the offence by grave and sudden provocation and consequently, he could be convicted only under Section 304 (Part I) IPC.

4. To substantiate the above submissionst, Mr.N.Duraisami, learned counsel for the appellant cited the following decisions:-

"1. Surinder Kumar v. Union Territory, Chandigarh (1989 L.W. (Crl.) 4 06)

2. Nagarajan v. State (1993 L.W (Crl.) 31)

3. Rajendran/Gopal v. State of Tamil Nadu etc. (1997-2-L.W. (Crl.) 520)

4. Venkatesan v. State by Inspector of Police, Tiruporur (1997-2-L. W (Crl.) 532)

5. Sathiyanathan v. State (1997(1) MWN (Cr.) 320) and

6. V.Raja v. State rep. by the Inspector of Police, etc. (1999-2L.W. (Crl.) 467). "

5. We have heard Mr.E.Raja, learned Additional Public Prosecutor also on the above aspects.

6. On going through the entire materials available on record, we have no hesitation to hold that the accused himself, after committing the murder of his wife, went and surrendered before PW.1 Village Administrative Officer and thereafter, PW.1 prepared Ex.P1 complaint and Ex.P2 report and went to Police Station and produced there and handed over Ex.P1 and Ex.P2 to PW.10 Head Constable. On receipt of the message from PW.10, PW.17 Inspector of Police, came to the scene of occurrence and recovered broken bottle pieces, which were found in the hands of the deceased. He has also recovered blood stained earth etc.

7. Apart from the extra judicial confession in Ex.P1 Complaint, we have got the evidence of PW.2 to whom the accused confessed that he committed the murder of his wife.

8. It is submitted that PW.1, the Village Administrative Officer, did not follow the procedure by sending the copies of Exs.P1 and P2 to the Tahsildar. But, a perusal of Exs.P1 and P2 would clearly show that one copy was sent to the Tahsildar. Therefore, we are unable to hold that the procedure contemplated in law has not been followed by P.W.1. On the other hand, iin our view, the extra judicial confession given by the accused to the Village Administrative Officer has to be held as voluntary particularly when it contains minute details about the occurrence and as such the same can be acted upon.

9. The next question to be considered is as to whether the accused is liable to be convicted for the offence under Section 302 IPC or lesser offence. As noted above, in this case, the conviction has to be based only on the basis of the extra judicial confession Ex.P1. On going through Ex.P1, it is clear that at about 8.45 am on 20.6.1997, the accused came to the house and asked the deceased-wife as to where she had gone.. She said that she went to

the field to tie the bull. Then, the accused, suspecting her fidelity, scolded her stating that she was telling lie and that she had gone somewhereelse. Then,, the deceased got angry and said "Mkhz;;lh ehd; vt';fpl;l ntz; Lbkd;whYk; ngha;tpl;L tUntd;" thereby meaning "I would go and share bed with anybody else". On getting provoked, the accused took out a kinfe and threatened the deceased that he would murder her. Then, the deceased swiftly went inside the kitchen and took out the bottle and beat on the head of the accused. In that process, the bottle got broken and the accused sustained injuries on the head. Then, the accused with the knife and went near her by showing the same and threatened her. The deceased, with broken bottle, beat the accused and inflicted injuries on the chest. On seeing the bleeding injuries on his chest, the accused got further provoked and gave cuts with Vettukathi on the left neck, shoulder and head of the deceased two tor three times. With the result, the deceased fell unconscious and within a few minutes, she died. At about 9.15 am., the accused left the house and thereafter, surrendered before the Village Administrative Officer.

10. On going through the contents of Ex.P1, as mentioned above, it is clear that though initially the accused provoked the deceased to get her angry by saying that she was telling lie and she had gone out for some other illegal purpose, it is clear that the deceased used abusive language and said that she would go and share bed with any person. These words, in our view, would certainly make the accused to have a sudden and grave provocation. At that time, the accused threatened the deceased that he would murder her. On fearing that she would be attacked, she went inside the house, took the bottle and began to attack the accused on head and chest and only then, the accused got further provoked and caused injuries on the deceased, which resulted in her death.

11. It is pointed out by Mr.N.Duraisami, learned counsel for the appellant that the cause of quarrel is not relevant, nor is it relevant who offered the provocation or started the assault. In this context, Mr.N.Duraisami, the learned counsel for the appellant would point out the observations made by the Supreme Court in Surinder Kumar v. Union Territory, Chandigarh (cited supra) as follows:-

" The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault."

So, the above observations of the Supreme Court, in our view, would squarely apply to the present facts of the case.

12. Consequently, it has to be held that the offence committed by the accused would fall under Exception 1 of Section 300 IPC and he is liable to be convicted only under Section 304 (Part I) IPC. The conviction under Section 302 IPC is set aside and instead, the accused is convicted under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for a period of seven years.

13. With the above modification in the conviction and sentence, the appeal is dismissed.

14. The service rendered by Mr.N.Duraisami, legal-aid counsel, is highly appreciated.

Internet: yes.
Index : yes.
vks

To

1. The Sessions Judge, Udhagamandalam, Nilgiris District.

2. The Superintendent, Central Prison, Coimbatore.

3. The Public Prosecutor, High Court, Madras.

4. The Inspector of Police, Erumadu Police Station,
Nilgiris District.

5. The Collector, Udhagamandalam, Nilgiris District.

6.The Director-General of Police, Chennai.

vks